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NO. _____

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1982

MARIE JOHNSON,

Petitioner,

vs.

SECRETARY OF HEALTH & HUMAN SERVICES,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

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QUESTION PRESENTED

1. Whether the Secretary contradicted Congressional intent and judicial precedent when he promulgated Claims Manual Sections 12964(b)(1)(B) and 13144(b) interpreting the Supplemental Security Income Act. These claims manual sections attribute income from one spouse to another for the six months subsequent to the separation of a couple which is an eligible couple under 42 U.S.C. §§1381-1383 even where the income is not actually available to one spouse and there is no legal responsibility for support by the other spouse. This is not an attack on the benefits level or on the six month rule. The only question is whether income is properly attributed and divided within the couples benefits level.

LIST OF PARTIES

The parties to this proceeding in the United States Court of Appeals for the Ninth Circuit were:

1. Petitioner Marie Johnson, as an individual who claims a denial of benefits under the Social Security Act, was Plaintiff-Appellant in the Ninth Circuit Court of Appeals.

2. Respondent Secretary of Health, Education and Welfare, in his official capacity, was Defendant-Appellee in the Ninth Circuit Court of Appeals.

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Working Women, Marriage and Retirement, President's Commission on Pension Policy, August 1980, Shelley Lapkoff, Table 6, p.31 12

The petitioner Marie Johnson, as an individual, prays that a Writ of Certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Ninth Circuit entered in this proceeding on February 11, 1982.

OPINION BELOW

The opinion of the Court of Appeals appears in the appendix hereto. The order and the judgment of the District Court for the Northern District of California entered on May 8, 1980 also appear in the appendix hereto.

JURISDICTION

The judgment of the Court of Appeals for the Ninth Circuit was entered on February 11, 1982. This petition for certiorari is to be filed within ninety (90) days of that date. This court's jurisdiction is invoked under 28 U.S.C. § 1254(1).

APPLICABLE STATUTES, REGULATIONS AND CLAIMS MANUAL SECTIONS

These are included in the Appendix to the Petition.

STATEMENT OF THE CASE

In September of 1978 Petitioner Marie Johnson was 61 years old and severely disabled. She had been married to Herman Johnson since October 13, 1962 (Appendix p. 4). Mr. Johnson was also elderly and disabled. They were, therefore, a couple eligible to receive financial assistance under the Supplemental Security Income (SSI) Program. 42 U.S.C. § 1382c(b) (Appendix p. 5). Mr. and Mrs. Johnson were also needy and, as a result, turned to this program for help. They were given, as a couples grant $126.30 to supplement the $448.10 Mr. Johnson received each month from his Teamster's union pension and Social Security Benefits (appendix pp. 13-15, 56) 42 U.S.C. §§ 1381, 1381(a), 1382.

Because of marital difficulties the couple separated by mutual

agreement (Appendix p. 5). After the separation Mr. Johnson kept all the pension and Social Security for himself; he shared none of it with Mrs. Johnson (Appendix p. 5). Mrs. Johnson immediately reported this to the Secretary and sought additional SSI for her own support (Appendix p. 5). The Secretary notified Mrs. Johnson that there would not be an immediate increase in benefits; rather the couple's SSI grant was to be divided in one-half and $63.15 paid to each party for six months (Appendix p. 6). This was done under Claims Manual Sections 12964(b)(1)(B) and 13144(b).[1/] (Appendix pp. 102,103)

1. The Claims Manual is an internal agency guide to field office staff for the operation of the SSI program. It has not been published in the Federal Register, nor promulgated through notice and comment rulemaking. It is not a regulation, has no legal force and does not bind the Social Security Administration. Schweiker v. Hansen, 450 U.S. 785, 789 (1981).

As a result, Mrs. Johnson was left with $63.15 as monthly income from September 1978 until April 1979 (Appendix 6). Mr. Johnson's income, on the other hand, included the entire Teamsters pension, Social Security and half of the SSI couple's grant, a total of $511.25. He not only had more income than Mrs. Johnson,[2] but so much income that he would have been terminated from SSI but for the Secretary's false presumption that he shared his income with Mrs. Johnson. 42 U.S.C. §1382(a)(b)[3] (appendix pp.23-29, amended pp.59-66)

Mrs. Johnson appealed her case to the Social Security Administration. The Administrative Law Judge denied her claim.

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2. There is no applicable State requirement that a spouse provide support if the parties separate by agreement. California Civil Code §5131. Once separated each party's earnings and accumulations are separate property. California Civil Code §5118.

3. At that time the individual grant was $307.60 per month.

(Appendix p. 4) Mrs. Johnson then appealed to the District Court for the Northern District of California under 42 U.S.C. 405(g) and 42 U.S.C. 1383(c)(3). (appendix p. 45)

The United States District Court, the Honorable William Ingram, found that the actions of the respondent Secretary did not contravene the relevant statutory and regulatory provisions, and granted summary judgment to the Secretary of Health, Education and Welfare. (Appendix p. 11)

On appeal to the Ninth Circuit Court of Appeals under 28 U.S.C. 1291, Mrs. Johnson claimed, as she had in the lower courts, that the Secretary's interpretation in the claims manual was in violation of the Social Security Act's intent and purpose, as well as of the Code of Federal Regulations; that only money which is actually available to the separated spouse should be counted. The Petitioner's position is, and was, simply that a proper interpretation of this

statute required the six month rule to be interpreted as follows: The couple would separate; for six months they would still be required to receive the couple's benefit rate.[4/] However, to be consistent with the intent of the Social Security Act, the Secretary would take into consideration the earned income and unearned income actually available to either of the parties. (Appendix pp. 113-123) The Secretary already has regulations doing this in other areas. Adaptation to this situation would present no substantial administrative burden.[5/] This interpretation would meet the needs of each individual according to the income actually available to each and, as importantly, would

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4. This would be consistent with this Court's approval of deeming and of the six month rule. Weinberger v. Salfi, 422 U.S. 749 (1975), Gray Panthers v. Schweiker, 453 U.S. 34 (1981)

5. E.g., see 42 C.F.R. 435.723(d) and 20 C.F.R. 416.220

not cost the taxpayer a single dollar more. The cost to the Social Security Administration would be exactly the same because the cap on the payment to the couple would be the same.

The Social Security Administration presently has to make a determination that the couple has separated and then issue separate checks.[6/] The only new step would be completion of an income statement in which each party states the earned or unearned income actually available. This would be filed during the application process which is presently required when a couple separates. As a result, the Social Security Administration would be notified of a proper distribution of the assets of the relationship.

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6. 20 C.F.R. § 416.1035 formerly 20 C.F.R. § 416.1041 See also 20 C.F.R. 416.220, C.F.R. § 435.732, 42 C.F.R. § 435.733, 42 C.F.R. § 435.723(d).

Claims Manual Sections 12964(b)(1)(B) and 13144(B) (Appendix pp. 102, 103), which presume that separated spouses share income equally, detrimentally affect thousands of people every year (mostly women) while not saving the taxpayer one cent nor preventing any sham separations or harm to the government.

When it created the SSI program, Congress surely did not intend such a senseless and harmful interpretation as that adopted by the Secretary. This Court is empowered with the authority to determine that the procedure in the claims manual is not a fair one as contemplated by 42 U.S.C. §§ 1381-1383. It should find the challenged claims manual sections violative of the intent and purposes of the Supplemental Security Income statute -- to support and benefit the aged, blind and disabled according to their needs.

REASONS FOR GRANTING THE WRIT

THIS CASE RAISES AN IMPORTANT ISSUE OF FEDERAL LAW

A. The Secretary's Interpretation Raises An Important Question Because It Detrimentally and Unfairly Affects Tens Of Thousands of Poor People, Mostly Women.

The Supplemental Security Income program was developed to assist indigent people such as Mrs. Johnson who "cannot work because [of] age, blindness or disability," Schweiker V. Wilson, 450 U.S. 221, 223 (1981). It is one of the social benefits programs developed by Congress which is specifically aimed at meeting society's obligations to those who cannot adequately care for themselves.

The Claims Manual sections which the Secretary seeks to enforce significantly affect the lives of thousands of indigent

aged, blind and disabled people every year. In 1980, there were 168,257 aged couples on SSI (336,514 people), 4,323 blind couples on SSI (8,464 people), and 69,991 disabled couples on SSI (139,982 people). Social Security Bulletin, Annual Statistical Supplement, 1980, Table 159, p.221. The Secretary's rules allow an unequal distribution of benefits which potentially affects the distribution of income between 272,380 couples, i.e., 484,960 people. This unequal attribution of income affects women most harshly.

Men are far more likely than women to have a work history or work opportunity from which to draw either earned or unearned income.[7/] M. Blaxall and B. Regan, Women and

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7/ In 1978, as an example, of those women who were family heads over the age of 22, 48% of the poor women in this age group did not work at all, while only 14% of poor men did not work. If we look at work experience, we find that 37% of women did not have any work experience during 1978, while only 16% of men had no work. Social Security Bulletin, Annual Statement Supplement, 1980, Table 10, p.64.

the Workplace: The Implications of Occupational Segregation, (Chicago: University Press) 1976. Further, 38% of men 65 or older are likely to have a pension, while only 18% of women in this same group have a pension.[8/] Many of the 18% of women who have pensions only have survivors' benefits based upon a husband's work record. Working Women, Marriage and Retirement, President's Commission on Pension Policy, August 1980, Shelley Lapkoff, Table 6, p.31. See also Social Security and Changing Roles of Men and Women, (H.E.W.) February 1979.

8/ Even within these statistics there is more discrimination against women. Within these statistics the average man's private pension is $2,060 per year. If he was a public employee he receives $4,830 annually. The comparable statistics for women are $1,340 and $2,750, repectively. Id.

Moreover, two out of every three poor adults are women.[9] A Statistical Portrait Women in the U.S., in Current Population Reports, Special Study, (Washington, D.C.: U.S. Department of Commerce, Bureau of the Census), Series P-23, No. 56, 1976. See also: Pearce, Diana, "The Feminization of Poverty: Women, Work and Welfare," Urban and Social Change Review, Feb. 1978.

Of the 4,142,017 people eligible and accepted for SSI in 1980, 65.5% were women and only 34.4% were men.[10] Social Security

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9/ For a thorough discussion of the broad impact of disproportionate work and wage availability between men and women see: Final Report of the National Advisory Council, The American Promise: Equal Justice and Economic Opportunity, Women in Poverty (U.S. Government Printing Office) reprinted Clearinghouse Review, p. 925, March 1982.

10/ 1,807,776 were over 65, 78,401 were blind and 2,255,840 were disabled. Id. 228,564 were children. Id. Table 166, p.227.

Bulletin, Annual Statistical Supplement, 1980 Tables 164, 169, pp. 227, 228. After a determination of age, blindness or disability the sole determination is whether the person is needy.

Because of the high divorce rate, the effect of the Secretary's position on women is great. Of marriages begun in 1950, 29.5% have ended or will end in divorce. However, of those marriages begun in 1970, 47.8% will end in divorce. James A. Weed, National Estimates of Marriage, Divorce and Survivorship (Vital and Health Statistics: Series 3, Analytical Studies; No. 19) (Department of Health and Human Services Publication; No. (PHS) 81-1403).

Thus, as was noted earlier, 272,480 couples were on SSI in 1980. All of these people are already needy in varying degrees. Approximately 1/3 to 1/2 of these couples will

divorce. Because, as noted previously, women are more likely than men to be poor and abandoned, women are unlikely to have separate income, the number of women unfairly impoverished by the Secretary's interpretation of the Social Security Act runs into the tens of thousands.

B. The Secretary's Interpretation Raises An Important Issue Because It Contradicts the Intent of Couples In Enacting the SSI Program To Provide Income Maintenance For the Indigent Aged, Blind and Disabled.

1. Background

The SSI program, 42 U.S.C. §§ 1381-1383, was created to provide a subsistence level allowance to needy aged, blind and disabled persons. Schweiker v. Wilson, supra, S.Rep. No.92-1230, 92nd Cong., 2d Sess., 383, 387 (1972), (1972 U.S. Code Cong.& Admin. News 4989.) Benefits are payable to eligible couples who have income and resources below statutory

limits. 42 U.S.C. Section 1382(a) (Appendix p. 23, amended p. 59). The basic entitlement, a flat rate governed by statutory formula, is paid to every eligible individual and couple, 42 U.S.C. Section 1381(a), (appendix P. 14), but is reduced by the amount of "countable" income that individual or couple receives. 42 U.S.C. Section 1382(b) (Appendix p. 28, amended p. 65). In defining countable income, the statute includes earned and unearned income, although there are exclusions. 42 U.S.C. Section 1382(a) (b).

Mrs. Johnson and her husband were, prior to their separation, an "eligible couple" for purposes of SSI computation. 42 U.S.C. Sections 1382(b)(1) and (2), 20 C.F.R. Section 416.1001(a) (Appendix pp. 105-107). According to the statute and regulation, an eligible couple who have separated continue to share a couple's benefit, and cannot receive an individual's

grant, until they have been separated for six months. 42 U.S.C. Section 1382c(b), (Appendix p. 30, amended p. 67). 20 C.F.R. Section 416.1001(a). That benefit level limit is known as the "six-month rule." The six-month rule is not being challenged in this petition.

Nor does Mrs. Johnson quarrel with the six-month rule's limit on the benefit level,[11] but with the two sections of the Claims Manual which contravene the Secretary's regulations, the statutes and the purpose of the SSI legislation.

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11 By "benefit level," Mrs. Johnson refers to the statutorily prescribed maximum SSI cash grant an individual or couple can recieve. That is to be distinguished from the benefit actually paid. The benefit level, as noted above, is reduced by the amount of countable income received. Here, Mrs. Johnson challenges the method of computing countable income during the six-month period, not the limit of the benefit level.

2. The Claims Manual Contradicts the Provisions of the SSI Statute and the Implementing Regulations

According to Claims Manual Sections 12964(b)(1)(B) and 13144(b), the Secretary does not inquire in this situation, as he does in other areas, (e.g. see 20 C.F.R. §416.220, 20 C.F.R. §416.22, 42 C.F.R. §435.723(d), see f.n.6), how much earned or unearned income a married but separated individual actually receives. The couple is treated as still living together, and the income is assumed to be received by both spouses.

However, the applicable statutes, as interpreted by the Secretary's regulations as adopted in the Code of Federal Regulations applicable in 1978, as well as those presently applicable, prohibit the counting of income which is not actually available. 20 C.F.R. §416.1120, in effect at the time of Mrs. Johnson's denial, stated: "[i]n

determining the amount of unearned income the amount actually available to the individual is considered." Actual availability was defined in 20 C.F.R. § 416.1180 as "the first point at which it is available to the individual to use." Likewise, under the present C.F.R.'s, both 20 C.F.R. §416.1002(b) and 20 C.F.R. § 416.1002(d) refer specifically to the couple's benefits level. Similarly, income is defined as "anything you receive in cash or in kind that you can use to meet your needs", 20 C.F.R. § 416.1102, and is to be counted "at the earliest of the following points: "when you receive it or when it is credited to your account or set aside for you to use." 20 C.F.R. § 416.1123. The District Court did not fully read and integrate all of the applicable sections when it ruled (see appendix pp. 104-112 for text of former regulations).

Thus, the Secretary's erroneous interpretation of the SSI program in the Claims Manual directly conflicts with his proper interpretation in the Code of Federal Regulations.

C. The Secretary's Interpretation Is Inconsistent With The Legislative History Of The SSI Program.

The language and history of the Social Security Act mandate that only actually available income be counted for the six months after separation. While the legislative history does not speak specifically to the issue of attributing income, we can gain guidance from the discussions of income by Congress and from the placement of these discussions.

42 U.S.C. section 1382(b)(2) directs the payment of benefits to an otherwise eligible individual be computed by reducing the statutory benefit level by "the amount of income, not excluded pursuant to section 1382(b) of this title, of such individual and spouse." Although it does list certain types of income which are counted or excluded, section 1382a(b) does not otherwise

define the concept of income used in the statute. However, the legislative history does show that rules for computing "income" of the spouse are different than the six-month rule. One indication is the choice of sections of the House Report in which the discussions of the six-month rule and income are placed. The six-month rule is discussed in section D3 on "benefits." Income is separately discussed in section D4 on "determination of income and resources," without reference to the six-month rule. H. Rep. No. 231, 92nd Cong., 1st Sess. (1971) reprinted in (1972) U.S. Code Cong. & Admin. News, 4489, 5136-5139, 5320-5322.

Further, the descriptive reference to the six-month rule in the legislative history is confined to the limit on the maximum benefit level during the first six months of a couple's separation:

> . . .[Y]our committee's bill provides that an eligible individual and spouse will receive a couple's benefit even though apart. Id. at 5136.

Finally, the intent of Congress in enacting SSI is to help those aged, blind and disabled individuals who cannot otherwise subsist because of inadequate income, i.e., income actually available or income which someone is legally obliged to provide. 42 U.S.C. 1381-1383, Schweiker v. Wilson, 450 U.S. 221, 223 (1981). In this case neither definition applies. Mrs. Johnson has no available income and Mr. Johnson is under no obligation to provide her with any.

The intent of Congress manifested in that legislative history is further illuminated when it is placed in the context of this Court's rulings, as will be discussed in the next portion of this brief.

D. The Claims Manual Conflicts with this Court's Previous Interpretation of Available Income.

This Court has consistently ruled that the definition of income means, absent a clear congressional statement to the contrary, income actually available for use.

Neither the discussion under the section on "determination of income and resources," nor any other section of the legislative history of the SSI program, specifically discusses the availability versus the unavailability of income in the circumstances of this case. Greater statutory definition or definitive Congressional treatment was unnecessary because "income" had come to have a clear meaning by the time the SSI program was created in 1972. That definition existed in the programs which SSI superseded (state programs for the elderly, blind, and disabled) and similar programs for the needs of other categories of

indigents (Aid to Families with Dependent Children [AFDC], Medicaid and Food Stamps). That definition has become an accepted definition of income. Income meant that which was actually available for use by the grant recipient.

In King v. Smith, 392 U.S. 309 (1968), this Court decided the definition of income in a welfare case. In that case it construed a provision of the Social Security Act, 42 U.S.C. Section 602(a)(7), which was similarly not specific on the definition of income. The section mandated that the income of the child or any relative claiming AFDC, or of any other individual (living in the same home as such child and relative) whose needs the state determines should be considered must be included as the income of an AFDC applicant. The question was whether AFDC could be denied to the children of a mother who "cohabits" in or outside her home with an able-bodied man, a "substitute father," regardless of whether the man is the children's father, is obliged to contribute to their support, or in fact does so.

The regulation restricted resources to those

> . . . that are, in fact, available to an applicant or recipient for current use on a regular basis.

The regulation was held by the Supreme Court to "clearly comport with the statute" and:

> . . . properly exclude from consideration resources which are merely assumed to be available to the needy individual. Id. at 319, fn.16.

Similarly, in Lewis v. Martin, 397 U.S. 552 (1968), AFDC recipients challenged California law and regulations that conclusively presumed that the income of a nonadoptive stepfather, or a man assuming the role of a spouse, (MARS), is available to the children in computing the children's AFDC assistance. Noting again that the Secretary's regulation requiring actual availability clearly comported with the Social Security Act, Id. at 551, 555, the Court

held that in the absence of proof of actual contribution, California may not consider the child's resources to include either the income of a nonadopting stepfather who is not legally obligated to support the child or a natural parent, or the income of a man assuming the role of a spouse - whatever the nature of his obligation to support. Id. at 560.

In Shea v. Vialpando, 416 U.S. 251 (1973) the Court reviewed Colorado AFDC regulations which limited an income deduction to a standard amount for work related expenses. Reflecting on the history of the Social Security Act, the Court found that Congress has sought to ensure that only needy families receive aid and that the amount of aid paid is based on the amount needed by the person after the income and resources are considered, i.e., income actually available.

Individualized determinations of income and resources are required and standard deductions were found to be violative of 42 U.S.C. Section 602(a)(7), Id. at 265-266.

Likewise, in Van Lare v. Hurley, 421 U.S. 338 (1975), AFDC recipients challenged New York regulations which require a pro-rata reduction in shelter allowance solely because a parent allows a nonlegally responsible person to reside in the home. Citing to King and Lewis the Court invalidated the State regulations. Again, only actually available income could reduce the benefits.

The applicability of King, Lewis, Shea, and Van Lare is not undermined by this Court's more recent holding in Gray Panthers v. Schweiker, 453 U.S. 34 (1981). In Gray Panthers, this Court held that the "deeming" of income of one spouse to another was allowable when there was a specific statutory basis set forth in the

Social Security Act (42 U.S.C. Section 1396(a)(17)(B)(D)(F)) and when the states could reasonably expect an applicant'-spouse to help pay because that spouse was, in fact, financially responsible. Gray Panthers v. Schweiker, Id. at 45. However, here there is no direct statutory mandate for deeming; and in California if the married couple separates by agreement, as did the Johnsons, there is no obligation on the part of either spouse to support the other one. California Civil Code, §§ 5131, 5118.

In Gray Panthers v. Schweiker, supra, and King v. Smith, supra, this Court paid particular attention to the legal obligations of a spouse or stepparent. In the present case, as in most separations, there is no obligation for support. The rationale of Van Lare v. Hurley is particularly noteworthy:

> A state is barred from assuming that nonlegally responsible persons will supply their resources to aid the welfare child . . . 421 U.S. at 347.

As in Van Lare, the Social Security Administration should not be allowed to count Mr. Johnson's two pensions as income available to Mrs. Johnson. Absent a judicial decree requiring payment, Mr. Johnson is under no legal obligation to provide her with funds.

The six-month rule is prophylactic in nature intending to prevent sham spearations in which the couples' income would be increased by faking a separation. Such statutory classifications are rationally related to a legislative goal of saving the taxpayers money. Weinberger v. Salfi, 422 U.S. 749, 781 (1975). However, such is not the case here. Congress has not, as it did in Gray Panthers v. Schweiker, supra, placed a specific caveat limiting or defining income as between the two couples within the

benefit level. It certainly did not include counting income from a nonlegally responsible spouse.

In this instance, the Claims Manual section does not enhance any state interest. Nor does it prevent damage to the government coffers. The Secretary's interpretation is simply punitive in nature. It punishes the spouse not having other income, either earned or unearned. More than punitive, the sections are unfair and arbitrary because they allow people such as Mr. Johnson to get more than they would otherwise be allowed. Mr. Johnson received the $63.15 in addition to the $468.10 in pensions, for six months after separating, when the allowable individual's grant was only $307.[10/]

10/ This overpayment is also not recoupable because of the "deeming" of income to Mrs. Johnson.

The Secretary's interpretation is totally contrary to the intent of the statute and this Court's past interpretations of the statute; it serves no legitimate governmental function and should be overturned.

E. Congress Intended That Fair Procedures Be Used In Implementing The Purposes and Intent of The Social Security Act.

The intent of the Supplemental Security Income statute is to provide a subsistence leveal income for the aged, blind and disabled. Schweiker v. Wilson, supra. In interpreting the SSI program through the Claims Manual, the Secretary is constrained by those purposes. Therefore, the Secretary must adopt procedures which are fair to those receiving Supplemental Security Income. As this Court noted in Greene v. McElroy, 360 U.S. 474, 508 (1958) there exists the

> . . . Court's concern that traditional forms of fair procedure not be restricted by implication or without the most explicit action by the Nation's lawmakers, even

in areas where it is possible that the Constitution presents no inhibition. (Emphasis added.)

Recently this Court interpreted certain Social Security regulations created under the Social Security Act. It ruled:

> In particular, this Court has been willing to assume a congressional solicitude for fair procedure, absent explicit statutory language to the contrary. Califano v. Yamasaki, 442 U.S. 682, 693 (1979).

Mrs. Johnson is asking for nothing more than a fair procedure; one that takes into consideration the intent of the statute and her individual needs. She is simply asking that income not be counted against a grant intended to provide subsistence level support unless it is actually available to her. She is not asking that the benefits level be increased nor that the Government pay any extra money, simply that

the Government adopt fair procedures that effectuate the purposes of the statute.

The failure of the Secretary to adopt a fair procedure is contrary to the intent and purposes of the Social Security Act, as well as the rulings of this Court.

CONCLUSION

In creating the Supplemental Security Income program, Congress clearly intended to provide for the needs of those aged, blind and disabled persons needing income maintenance. The Secretary's interpretation of the statute ignores the implementing statutes as well as the regulations. Further, the Secretary's interpretation ignores the judicial precedent established by this Court in defining both income and fair procedures. This issue affects thousands of people, most of whom are women. It is a substantial federal question which must be decided by this Court.

For the reasons stated, petitioner respectfully requests that this Court grant certiorari to review the decision of the Ninth Circuit Court of Appeals.

MARY BURDICK
DAN STORMER

By _____
DAN STORMER
COUNSEL FOR PETITIONER

CERTIFICATE OF SERVICE BY MAIL

I, DEBORAH KLINGER, declare:

That I am a resident of the United States and employed in Los Angeles County, California; that my business address is 3535 West Sixth Street, Los Angeles, California 90020; that I am over the age of eighteen years and am not a party to the above-entitled action;

That I am employed in the office of a member of the Bar of the United States Supreme Court, at whose direction the service by mail described in this Certificate was made; that on May 12, 1982, I deposited in the United States mail in the City of Los Angeles, County of Los Angeles, State of California, in the above-entitled action, in an envelope bearing the requisite postage, two copies of:

PETITION FOR WRIT OF CERTIORARI AND APPENDIX, addressed to:

G. WILLIAM HUNTER
United States Attorney
GEORGE C. STOLL
Assistant United States Attorney
450 Golden Gate Avenue
San Francisco, California 94102

at their last known address, at which place there is a delivery service by United States mail.

Executed this 12th day of May, 1981, at Los Angeles, California.

I declare under penalty of perjury that the foregoing is true and correct.

Deborah Klinger
DEBORAH KLINGER